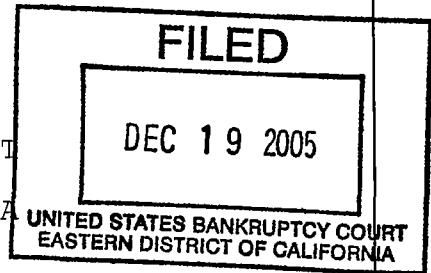


(3)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION



In re)	Case No. 05-36453-A-7
SARAH BRIDGET SCHAFER,)	Docket Control No. None
)	Date: Ex Parte
Debtor.)	Time: Ex Parte

MEMORANDUM

The debtor has filed an ex parte motion asking for a waiver of the \$26 filing fee required when the debtor amends the schedule of creditors or the list of creditors. See Appendix to 28 U.S.C. § 1930.

This petition was filed on October 13, 2005. Therefore, the amendments to section 1930(f) made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 are not applicable in this case. Those amendments went into effect only in cases filed on or after October 17, 2005.

In cases filed prior to October 17, 2005, section 1930(a) requires payment of the fees "[n]otwithstanding section 1915 of this title."

28 U.S.C. § 1915 provides that "[a]ny court of the United States" has the authority to waive filing and related fees due to a plaintiff's indigence. However, except in cases filed on and

13

1 after October 17, 2005, section 1930(a) specifically excepts
2 bankruptcy filing fees from waiver under section 1930(a).

3 Further, 28 U.S.C. § 451, which defines the terms used in
4 title 28, defines "court of the United States" as the Supreme
5 Court, appellate courts, district courts and any federal court in
6 which judges are entitled to hold office during good behavior.
7 "Good behavior", according to the weight of authority, refers to
8 Article III judges who enjoy life tenure and may be removed only
9 by impeachment. Bankruptcy judges, however, are Article I judges
10 and are appointed for 14 year terms. As a result, most courts
11 have held that bankruptcy courts are not courts of the United
12 States for the purpose of the indigence waiver of 28 U.S.C. §
13 1915. 1 Collier on Bankruptcy, § 9.05, p. 9-7 (Lawrence P. King,
14 et al., eds., 15th ed. rev. 2003).


15 Therefore, the court is unable to waive the fees.

16 The court notes further that if this petition had been filed
17 on or after October 17, 2005 it would not grant the fee waiver
18 because the debtor has not proven, as required by new section
19 1930(f)(1), that her income is less than 150% of the income
20 official poverty line.

21 A separate order will be issued.

22 Dated: 19 Dec. 2005

23 By the Court

24
25 
26 Michael S. McManus, Chief Judge
27 United States Bankruptcy Court
28

CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a
judicial assistant to the Honorable Michael S. McManus, mailed by
ordinary mail to each of the parties named below a true copy of
the attached document.

Office of the US Trustee
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Hank Spacone
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Dated: December 20, 2005

Susan C. Cox

Susan C. Cox
Judicial Assistant to Judge McManus